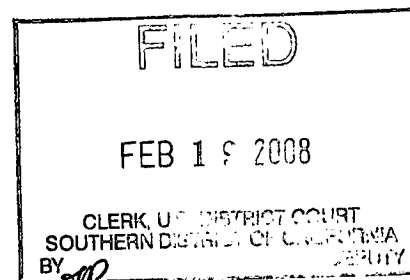


ORIGINAL

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 7 UNITED STATES OF AMERICA



8 UNITED STATES DISTRICT COURT
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)	Criminal Case No. 08CR0208-DMS
)	
11 Plaintiff,)	
)	
12 v.)	STIPULATION OF FACT AND JOINT
)	MOTION FOR RELEASE OF
13 LOURDES PATRICIA MARTINEZ,)	MATERIAL WITNESSES AND
)	ORDER THEREON
14 Defendant.)	

15
 16 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
 17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Eugene
 18 S. Litvinoff, Assistant United States Attorney, and defendant LOURDES PATRICIA MARTINEZ,
 19 by and through and with the advice and consent of defense counsel, Frank Balistreri, Esq., that:

20 1. Defendant agrees to execute this stipulation on or before the disposition date and to
 21 participate in a full and complete inquiry by the Court into whether defendant knowingly,
 22 intelligently and voluntarily entered into it. Defendant agrees further to plead guilty to Count 2 of
 23 the Indictment which charges defendant with a non-mandatory minimum count of Bringing in Illegal
 24 Aliens Without Presentation, in violation of 8 U.S.C. §1324(a)(2)(B)(iii).

25 2. Defendant agrees to plead guilty to the charge described above pursuant to the plea
 26 agreement on or before **February 19, 2008**.
 27
 28

1 3. The material witnesses, Jose Miguel Jaquez, Aurea Garcia-Macedo, and Reyna
2 Chaidez-Arambula, in this case:

3 a. Are aliens with no lawful right to enter or remain in the United States;

4 b. Entered or attempted to enter the United States illegally on or about January
5 13, 2008;

6 c. Were found in a vehicle driven by defendant Lourdes Patricia Martinez at the
7 ~~San Ysidro~~ ^{OTAY MESA} California Port of Entry (POE) and that defendant knew or acted in reckless disregard
8 of the fact that the material witnesses were aliens with no lawful right to enter or remain in the
9 United States;

10 d. Were paying between \$2300 and \$3000 to others to be brought into the United
11 States illegally and/or transported illegally to their destination therein; and,

12 e. May be released and remanded immediately to the Department of Homeland
13 Security for return to their country of origin.

14 4. After the material witnesses are ordered released by the Court pursuant to this
15 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
16 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any
17 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral
18 attack, that:

19 a. The stipulated facts set forth in paragraph 3 above shall be admitted as
20 substantive evidence;

21 b. The United States may elicit hearsay testimony from arresting agents
22 regarding any statements made by the material witness(es) provided in discovery, and such
23 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements
24 against interest of (an) unavailable witness(es); and,

25 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
26 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
27 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant

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1 waives the right to confront and cross-examine the material witness(es) in this case.

2 5. By signing this stipulation and joint motion, defendant certifies that defendant has
3 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
4 further that defendant has discussed the terms of this stipulation and joint motion with defense
5 counsel and fully understands its meaning and effect.

6 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
7 immediate release and remand of the above-named material witness(es) to the Department of
8 Homeland Security for return to their country of origin.

9 It is STIPULATED AND AGREED this date.

10 Respectfully submitted,

11 KAREN P. HEWITT
United States Attorney

12 Dated: 2/13/08

Eugene S. Litvinoff
13 EUGENE S. LITVINOFF
Assistant United States Attorney

14 Dated: 2-11-08

Frank Balistreri
15 FRANK BALISTRERI
Defense Counsel for Lourdes Patricia Martinez

16 Dated: 2-11-08

Lourdes Patricia Martinez
17 LOURDES PATRICIA MARTINEZ
18 Defendant

19
20 **ORDER**

21 Upon joint application and motion of the parties, and for good cause shown,

22 **THE STIPULATION** is admitted into evidence, and,

23 **IT IS ORDERED** that the above-named material witness(es) be released and remanded
24 forthwith to the Department of Homeland Security for return to their country of origin.

25 **SO ORDERED.**

26 Dated: 2-19-08

United States Magistrate Judge
27 United States Magistrate Judge

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Material Witness(es) And Order Thereon in
United States v. Lourdes Patricia Martinez